

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT  
CHANDIGARH

R.S.A. No.1559 of 1983

Date of Decision. 04.11.2011

Joginder Singh son of Mastan Singh and others

.....Appellants

Versus

Punjab State through District Collector, Sangrur and others

.....Respondents

Present: None for the appellant.

None for the State.

Mr. Vijay Pal, Advocate  
for respondent No.2.

None for respondents No.3 to 5.

**CORAM:HON'BLE MR. JUSTICE K. KANNAN**

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes/No
2. To be referred to the Reporters or not ? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

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**K. KANNAN J.**

1. There is no representation on behalf of the appellants. Learned counsel for the respondents is present and ready. Having regard to the fact that the appeal is of the year 1983 and it is identified by this Court on the administrative side as one of the oldest cases to be taken up immediately for disposal on merits, I proceed to dispose of the case on the basis of records and with the assistance of counsel for the respondents on merits.

2. The plaintiffs, who had filed the suit for declaration lost at the trial Court as well as the Appellate Court. They are in appeal before this Court assailing the decisions. The suit was for a declaration that the order passed by the District Collector Sangrur on 26.07.1969

allotting the property measuring 5 bighas 5 biswas in Khasra No.1387 in village Chaunda in favour of Bhag Singh arrayed as the defendant was void and for a permanent injunction restraining Bhag Singh from, in any manner, interfering with the plaintiffs' possession. It must be immediately noticed that the suit for declaration as referred to in the preamble of the plaint is distinct from the way the prayer column is couched in paragraph 12, where the declaration sought is that the cancellation of allotment of land made in favour of the plaintiffs' was void and for an injunction restraining the defendants from interfering with the possession. The inconsistency could be reconciled only by the fact that admittedly the property was the subject of allotment in the year 1961 under Nazool Land Transfer Rules, 1956 by the Deputy Commissioner (Collector) Sangrur on 15.06.1961 and the plaintiffs themselves had made reference to the fact that this allotment had been cancelled subsequently on 13.07.1978. The plaintiff is contending that this cancellation was void ab initio since the same has been passed against the principles of natural justice. The subsequent allotment made in favour of the 2<sup>nd</sup> defendant was, therefore, contended to be not valid and the plaintiffs had sought for restraint against them from interfering with the plaintiffs' possession.

3. The State remained ex parte and gave no reason as to how the proceedings were initiated for cancellation of allotment in the year 1978 and how a fresh allotment was made in favour of the 2<sup>nd</sup> defendant. The Courts below, however, held that there was no proof that the property had been even allotted in favour of the plaintiffs and that possession of the property had been handed over to the plaintiffs. The Court also

found that there had been a cancellation of order of allotment and the plaintiff could not file a suit without challenging the cancellation itself. A mere characterization of the cancellation as void cannot be a ground for upholding the claim for injunction against the defendant. The suit is contested only by the legal representatives of the private respondents in whose favour the subsequent allotment was made.

4. On the basis of pleadings, the following substantial questions of law arise for consideration.

- (i) whether the Courts below were justified in dismissing the plaintiffs' suit rested on alleged allotment in favour of the plaintiffs by the State on 15.06.1961 on the ground that the allotment had not been proved when the action of the State or functionaries must be presumed to be valid as an official act unless there are valid grounds brought by the State to justify the cancellation of allotment?
- (ii) whether the alleged cancellation of allotment in favour of the plaintiff purported to have been done on 13.07.1978 legal and void?
- (iii) whether the State is entitled to assign the property through an allotment in favour of the 2<sup>nd</sup> defendant?
- (iv) whether the allotment of the property in favour of the 2<sup>nd</sup> defendant-Bhag Singh valid to entitle the allottee to displace the claim of the plaintiffs in respect of the disputed property?

5. On the first point of whether the allotment made in favour of the plaintiffs made on 15.06.1961 could have been cancelled, I find that even the alleged letter of allotment is not produced before the Court. The relevant Rules themselves show that transfer of Nazool Lands under Rule 3 could be made to a Cooperative Society comprising of persons belonging to Scheduled Castes family. Rule 9-A of Nazool Land Transfer Rules of 1956 reads as follows:-

“9(A)(i): The arrears of instalments due under these rules shall be recoverable as arrears of land revenue.

(ii) In case of Cooperative Society/individual member consistently makes default in making payment of two instalments of price of Nazool land, the Collector may review the case and cancel the allotment of land to the cooperative society/individual member whereupon the land shall revert to Government.

(iii) The cooperative society/individual member concerned may file an appeal to the Commissioner against the Collector's order within sixty days of the date of that order, and the Commissioner's order passed in appeal shall be final.

6. In this case, the cancellation of properties could have been made for non-payment of installments. The Courts below have held that there is no proof that the property had been even specifically allotted in favour of the plaintiffs. Admittedly, the transfer itself has not been completed by a certificate of transfer. A mere allotment does not grant a right to the property itself. It merely is the first stage of obtaining a right. If it does not fructify into a transfer deed in the manner provided, then no vested right can ever obtain. Rule 11 prescribes a mode of transfer, which is reproduced as under:-

“11. Certificate of transfer:-

(1) As soon as the last installment of price has been paid by the Cooperative Societies or the individual member of the Scheduled Caste, as the case may be, in whose favour the transfer has been made under the Rules, the Collector shall grant to it or him under his signatures and seal a certificate of transfer of ownership in the revised Form 'B' appended to these Rules.”

7. The Hon'ble Supreme Court recently held in the judgment in **Greater Mohali Area Development Authority and others Vs. Manju Jain AIR 2010 SC 3817** that a merely letter of allotment itself cannot be a basis for claiming title to the property. Rule 9-A, which we have extracted above again contains a provision for challenging an order of

cancellation. The plaintiffs, who had taken notice of the cancellation could not have merely treated the proceedings as void without resorting to the procedure prescribed under the Act. The plaintiffs' action for injunction cannot lie and more so, when the plaintiffs have not been able to show their possession continuously in pursuance of their allotment.

8. The questions of law raised are answered against the appellants/plaintiffs and the appeal is dismissed.

**(K. KANNAN)  
JUDGE**

**November 04, 2011**  
Pankaj\*